

D. M. DOWDLE  
TOM BOSTON  
PAUL CRESON

IBLA 79-481  
IBLA 79-508

Decided February 28, 1980

Appeals from decisions of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offers NM 36321, etc.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Drawings

Where officers of a corporation file applications for leases for parcels of land in a simultaneous drawing and are the successful offerors and where the corporation has not filed applications in competition with these corporate officers for the same parcels in the same drawing, these offers need not be rejected as prohibited multiple filings under 43 CFR 3112.5-2, when the corporate officers make an adequate showing that their oil and gas leasing activities were both authorized by the corporation and unaffected by the corporate relationship.

APPEARANCES: Don E. Williams, Esq., of Dallas, Texas, for appellants.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

D. M. Dowdle, Tom Boston, and Paul Creson have appealed from decisions of the New Mexico State Office, Bureau of Land Management (BLM), dated May 18, 1979, and June 28, 1979, rejecting their oil and gas lease offers NM 36321, etc., for failure to comply with the requirements of 43 CFR 3112.5-2. 1/

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1/ The lease offers included under the respective docket numbers are:

Appeals docketed under IBLA 79-481:  
NM 36321, NM 36324, NM 36325, NM 36326, NM 36328, NM 36332, NM 36378,

Dowdle and Boston were successful applicants for several parcels in the New Mexico March 1979 simultaneous drawing. Creson's offer was drawn number three for a parcel in the same drawing. Their offers were rejected when BLM learned that they were officers of Public Lands Exploration, Inc. The decisions specifically stated:

Upon viewing our Microfilm we found that D. M. Dowdle and Tom B. Boston both filed for the same parcel[s], then again they are both officers of Public Lands Exploration, Inc., although no entry cards were filed for or on behalf of the corporation. Such offers for the parcel are subject for rejection due to the relationship between the offerors and their company. The company appears to be the beneficiary of multiple applications filed per parcel. Your attention is called to Title 43 CFR 3112.5-2.

The relevant portion of 43 CFR 3112.5-2 states:

When any person, association, corporation, or other entity or business enterprise files an offer to lease for inclusion in a drawing, and an offer (or offers) to lease is filed for the same lands in the same drawing by any person or party acting for, on behalf of, or in collusion with the other person, association, corporation, entity or business enterprise, under any agreement, scheme, or plan which would give either, or both, a greater probability of successfully obtaining a lease, or interest therein, in any public drawing, held pursuant to § 3110.0-6(b), all offers filed by either party will be rejected.

In their statement of reasons appellants contend that since 1973 the provisions of the limited partnership agreement of Public Lands Exploration, Ltd., has recognized and allowed the officers and directors of the corporation to continue to participate in the simultaneous drawings on an individual basis. 2/ Appellants cite provision 26 of the Public Lands Exploration, Ltd., limited partnership agreement:

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fn. 1 (continued)

NM 36379, NM 36380, NM 36382, NM 36383, NM 36386, NM 36388, NM 36381, NM 36390 and NM 36406

Appeal docketed under IBLA 79-508:

NM 36323

2/ Appellants point out that Public Lands Exploration, Inc. (Public Lands), was formed in 1971 for the principal business purpose to act as the corporate general partner of two limited partnerships named Public Lands Exploration, Ltd., which was formed for the purpose of acquiring various oil and gas leases on Federal lands by open filing. Appellants state that in 1973, the limited partners of the limited partnership exchanged their partnership interests for common stock of Public Lands. Virtually all of the present shareholders of Public Lands were limited partners in Public Lands Exploration, Ltd., or are beneficiaries or assignees of such limited partners.

26. Agreement not to compete. The general partners and the officers and directors of the Corporation will not engage in activities competitive to the Partnership until such time as all or substantially all of the capital contributions made by the Limited Partners have been expended pursuant to paragraph 7 hereof, with the exception that such persons and the businesses with which they are presently associated may continue to file for federal oil and gas leases which are to be granted in simultaneous drawings. (Emphasis added).

Relying on Raymond J. Stipek, 74 I.D. 57 (1967), they contend they are entitled to make individual offers to lease in the simultaneous drawings and that Public Lands had no interest in these applications by virtue of the fact the applicants are officers of the corporation and, therefore, the subject leases should be issued.

This Board has repeatedly held where a corporation and one or more of its officers-stockholders file simultaneous offers for the same tract, any of such offers, if drawn successfully must be rejected, or the lease therefrom canceled upon discovery of the facts. In such instances a prohibited multiple filing occurs under 43 CFR 3112.5-2. June Oil and Gas, Inc., 41 IBLA 394, 86 I.D. 374 (1979); William R. Boehm, 36 IBLA 346 (1978); Panra Corp., 27 IBLA 220 (1976).

[1] However, we have noted that the same result would not follow where offers by corporate officers are not in competition with a corporation offer and not part of a scheme to enhance the corporation's chance to obtain a lease, such offers are not per se interdicted. Graybill Terminals Co., 33 IBLA 243, 245 (1978); Raymond J. Stipek, *supra* at 60-61 (1967). The duty of a fiduciary to his corporation is his duty to the other officers, directors, and stockholders of the corporation, and if he has violated his duty to any of these he has breached the trust with respect to the corporation. *Id.* In essence, if it be shown that a corporate officer who files an oil and gas offer in competition with his corporation is authorized by the by-laws of the corporation to engage in the oil and gas business and he is not a stockholder and has the consent of the stockholders to his engaging in the same business, oil and gas as the corporation, his offer would appear to be unaffected by the corporate relationship. Graybill Terminals Co., *supra*; Raymond J. Stipek, *supra*.

In the instant case appellants have made more than an adequate showing that their offers were not in competition with Public Lands Exploration, Inc., and their individual oil and gas leasing activities were both authorized by the corporation and unaffected by the corporate relationship. There has been no breach of the officer's fiduciary duty to the corporation. Nor has any apparent benefit accrued to the corporation by the success of these applicants which would

result in the corporation obtaining any interest in these leases. Therefore, there is no basis for holding that the cited regulation prohibiting multiple filings has been violated.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are reversed and the cases remanded for further action consistent herewith.

Anne Poindexter Lewis  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

